

# **EXHIBIT A**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

IN RE:

4 TERRORIST ATTACKS ON  
5 SEPTEMBER 11, 2001

03 MDL 1570 (GBD) (FM)

6 -----x  
7 New York, N.Y.  
8 March 19, 2013  
9 11:51 a.m.

Before:

10 HON. FRANK MAAS,  
11 Magistrate Judge

12 APPEARANCES

13 COZEN O'CONNOR

14 Attorneys for Plaintiff Federal Insurance  
15 BY: SEAN P. CARTER, ESQ.  
16 J. SCOTT TARBUTTON, ESQ.

17 ANDERSON, KILL & OLICK, PC

18 Attorneys for Plaintiffs O'Neill and Plaintiffs' Executive  
19 Committee  
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22 Attorneys for Plaintiffs Burnett and Euro Broker  
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D3JP911C

1 judgment against Rabita.

2 THE COURT: Thank you.

3 MR. CARTER: Thank you.

4 THE COURT: Mr. McMahon?

5 MR. McMAHON: Thank you, your Honor. I think it would  
6 be appropriate if we do separate out Rabita Trust and Wa'el  
7 Jelaidan. Excuse me, your Honor.

8 THE COURT: Before we separate them out, as to both of  
9 them back, in November of 2011 I directed that efforts be made  
10 to locate and produce documents. And when I read your  
11 materials, it looks like, basically, nothing happened for two  
12 years, and then in February of this year there was an effort to  
13 sort of paper that over by having you send letters to some  
14 financial institutions.

15 It struck me that if I had retained you to produce  
16 documents for me in a litigation where I was the defendant,  
17 rather than me going to the bank, where I had a relationship  
18 and seeking the documents, if you sent letters akin to the  
19 letters that were sent to these foreign banks, even domestic  
20 banks would not have produced documents.

21 So it doesn't strike me as anything approaching an  
22 adequate effort to seek those documents from those financial  
23 institutions.

24 MR. McMAHON: Your Honor, the reason I'm making the  
25 suggestion that we keep them individually looked at is, the

D3JP911C

1 status of the Rabita Trust situation, your Honor, is that they  
2 are then jurisdictional discovery. We filed a motion to  
3 dismiss. The judge did not grant it, but he did grant their  
4 application for some limited discovery, jurisdictional  
5 discovery.

6 So I don't know, your Honor, whether or not you  
7 currently have jurisdiction over Rabita Trust because nothing  
8 has been decided with respect to that outstanding motion. And  
9 the reason I say that is this --

10 THE COURT: Well, you haven't filed any motion seeking  
11 to narrow the discovery, correct?

12 MR. McMAHON: No, your Honor, because it was limited,  
13 I thought, jurisdictional discovery. But my point, your  
14 Honor --

15 THE COURT: Let's stick with some narrow questions as  
16 to the trust.

17 MR. McMAHON: Well, I'd like to, your Honor.

18 THE COURT: Who's running it today?

19 MR. McMAHON: Well, here is my problem which I was  
20 going to convey to you. I'm not an expert in Pakistani law,  
21 nor are these colleagues. Who can determine, for example, when  
22 somebody can direct litigation pursuant to Pakistani law? That  
23 is the Pakistani law governs the attorney-client relationship  
24 here. Who can make a determination as to how you direct  
25 somebody in litigation?

D3JP911C

1 Now, I took a position with Mr. Carter, Sean, that  
2 many years ago I was mandated to try to dismiss out Rabita  
3 Trust. Now --

4 THE COURT: Okay. And when you say were mandated, who  
5 retained you for that purpose?

6 MR. McMAHON: Mr. Wa'el Jelaidan, and I have not yet,  
7 your Honor, been relieved of that directive.

8 THE COURT: And when was that?

9 MR. McMAHON: Well, that was approximately eight, nine  
10 years ago.

11 THE COURT: Okay.

12 MR. McMAHON: No one knows, under Pakistani law, can  
13 you fire an attorney. As far as I'm concerned, I'm still the  
14 attorney because, to the extent Mr. Carter has articulated this  
15 view, that at least the Pakistani government is in part  
16 controlling the show, if you will. The Pakistani government  
17 has not indicated to me that I can no longer represent them.

18 In fact, when I was at the Pakistani -- not embassy,  
19 I'm sorry -- attache in Washington, D.C., it was made clear  
20 they were very happy that somebody is trying to do something  
21 here. But my point is that under Pakistani law, can he tell  
22 me, for example, when you can revoke a directive?

23 THE COURT: Well, I'm not sure that Pakistani law much  
24 matters. We're not in a Pakistani court.

25 MR. McMAHON: But there's an attorney-client

D3JP911C

1 relationship, your Honor, that was started under Pakistani law  
2 with respect to representing this Trust, and I can't just walk  
3 away from a client. And he talks about the fact that Wa'el  
4 Jelaidan has been in charge of this organization, or that it's  
5 dormant. The situation your Honor --

6 THE COURT: But wait, wait. Part of representing a  
7 client or part of participating in an action in the United  
8 States is to play an active role in the case, and I gather your  
9 position is, correct me if I'm wrong, but Mr. Jelaidan has not,  
10 for a number of years, had any role in the trust; is that  
11 correct?

12 MR. McMAHON: Well, your Honor, here's the facts. He  
13 submitted a letter of resignation about, I don't know, four  
14 years ago or so. Nothing was ever done with that letter, to  
15 the best of my knowledge. I communicated with Mr. Wa'el  
16 Jelaidan's attorney about that particular issue. In other  
17 words, under Pakistani law, or under any law, was that letter  
18 of resignation accepted, in other words, he's no longer  
19 secretary general. Well, as far as I know --

20 THE COURT: Well, forget whether it was accepted or  
21 not. He, to your understanding, is not acting as secretary  
22 general on a day-to-day basis, correct?

23 MR. McMAHON: Up to a certain number of years ago,  
24 that's correct, your Honor.

25 THE COURT: Well, you say up to. He didn't resume

D3JP911C

1 that role. As of several years ago, he's no longer acting as  
2 secretary general? Whether he should be or not is a different  
3 question, but --

4 MR. McMAHON: The problem is, your Honor, is nobody is  
5 acting. Musharraf was on this board of directors when we  
6 learned --

7 THE COURT: So wait, wait, wait. The answer to my  
8 question is, Mr. Jelaidan is not acting as the secretary  
9 general and hasn't been for at least several years, correct?

10 MR. McMAHON: That's correct, your Honor.

11 THE COURT: Okay. So then we get to the question of  
12 who is acting on behalf of the trust today; do you know?

13 MR. McMAHON: I'm sorry, your Honor?

14 THE COURT: Who is acting today on behalf of the trust  
15 in terms of such issues as producing documents and directing  
16 what you should or shouldn't do?

17 MR. McMAHON: Well, your Honor, the communication that  
18 I had solely, and I still have, is with Wa'el Jelaidan and with  
19 his counsel in Saudi Arabia, in Jeddah, and those were the  
20 folks that originally had, I think, some documents and some  
21 communications about the Rabita Trust, and I continue to deal  
22 with them, but --

23 THE COURT: But we just established that Mr. Jelaidan  
24 is not actually operating as the second general of the trust.  
25 So I understand he has some lingering interest in seeing that

D3JP911C

1 it's adequately represented, but in point of fact, he doesn't  
2 speak for the trust today, correct?

3 MR. McMAHON: That's correct, Judge. And the problem  
4 is that there is no trust. There is no activity. It's been  
5 dormant since 1994. It was set up specifically -- and if they  
6 would consult their usual research sources, the media, they  
7 would find out that that entity was set up specifically to  
8 bring back Pakistanis from Bangladesh. It has nothing to do  
9 with directing activities toward Americans, consistent with the  
10 Second Circuit, your Honor. My point is the Second Circuit  
11 hasn't yet to rule on this issue.

12 THE COURT: Well, one thing both sides keep talking  
13 about in their papers, which strikes me as almost entirely, if  
14 not entirely, irrelevant in this case is the merits. So  
15 whether Mr. Jelaidan is, you know, somebody running a harmless  
16 charitable organization, or one of the world's leading  
17 terrorists, is largely irrelevant to the issues before me.

18 What I'm left with is a defendant who, at some point,  
19 may have retained you, but who, it appears, has abandoned this  
20 lawsuit in terms of defending it because there is no nobody who  
21 can direct your actions with respect to the trust today who  
22 you've been able to identify.

23 MR. McMAHON: That is correct, your Honor. To the  
24 extent the Pakistani government and the Muslim World League  
25 direct the activities -- or could direct the activities and are

D3JP911C

1 empowered to do so, those are the two entities that could call  
2 the shots about whether or not, I guess, I would continue as  
3 counsel, now, among other issues.

4           But I'm telling you, your Honor, there's nothing going  
5 on with that entity. I don't know what you do. Musharraf  
6 resigned. Everybody that was on the board of directors was  
7 with the Pakistani government. The Pakistani government takes  
8 the position that, indeed, if you want documents, Mr. McMahon,  
9 we can't help you. They're in storage someplace. My question  
10 is, why can't the 9-11 attorneys pursue our allies Saudi  
11 Arabia, our ally Pakistan.

12           THE COURT: Wait. The documents, and that seems to be  
13 reflected in the papers, are in storage someplace. Has --

14           MR. McMAHON: What happened was --

15           THE COURT: Wait, wait.

16           MR. McMAHON: -- the Pakistani government officials  
17 locked up those premises. Someone took the files, we don't  
18 know who. They believe they ended up in some Pakistani  
19 ministry. That's the bottom line, your Honor.

20           THE COURT: And what efforts have you or Mr. Jelaidan  
21 or Mr. Jelaidan's Saudi counsel undertaken to find out where --

22           MR. McMAHON: I've sent letters to the last-known  
23 address of the custodian for the records for that entity.

24           THE COURT: In English, I presume?

25           MR. McMAHON: Yes, your Honor. Well, in Pakistan, a

D3JP911C

1 lot of --

2 THE COURT: Let me rephrase the question. What  
3 efforts have Mr. Jelaidan or his Saudi counsel undertaken to  
4 determine where those documents are?

5 MR. McMAHON: Well, I think, your Honor, at my behest,  
6 they have done everything they possibly --

7 THE COURT: Well, you say "I think."

8 MR. McMAHON: Well, I know they have, your Honor, but  
9 it's been a futile gesture in terms of the Pakistani government  
10 takes the position those records are in storage someplace.

11 THE COURT: You told me it was a futile gesture.  
12 That's not telling me what exactly they did.

13 MR. McMAHON: Well, I'd have to go back and chronicle  
14 it specifically, your Honor. To be candid with you, I just  
15 know that efforts were made to try to get whatever documents  
16 the Pakistani government had, and I said at some stage, listen,  
17 I'll take this over and I'll do it because I want to find out  
18 what the story is. I'll go to the embassy, and we'll find out  
19 where these records are, and we'll see what we can do.

20 I've been staying in the case on this issue, I think  
21 as a courtesy to my brethren. I don't need this. Those  
22 documents are somewhere in the Pakistani government. No one's  
23 trying to hide them. We have agreed, your Honor, to an  
24 in-camera inspection. If somebody thinks that we're trying to  
25 hide the ball with respect to the Rabita Trust or even Wa'el

D3JP911C

1 Jelaidan, but I've done what I can --

2 THE COURT: I appreciate that, but it sounds like  
3 Mr. Jelaidan has instructed you to do what you can, not only  
4 for himself but for the trust, and that you've made some  
5 efforts in that direction. But that, in point of fact,  
6 particularly if the trust, in Mr. Jelaidan's view, doesn't  
7 exist anymore, there's no entity to participate in this  
8 litigation and nobody who can speak for the trust in terms of  
9 seeking documents, who you represent; and that, therefore, at  
10 least as to the trust, a default judgment should be entered.

11 Am I missing something?

12 MR. McMAHON: Well, your Honor, I don't know what a  
13 default judgment, first of all, is going to accomplish.

14 THE COURT: Probably nothing, but rather than playing  
15 sort of a shell game here in terms of saying I represent an  
16 entity that I haven't been in contact with -- I appreciate  
17 you're trying to do what you can, but I think it just muddies  
18 the waters.

19 In point of fact, you're purporting to represent a  
20 defunct organization, where the organization, as opposed to you  
21 or Mr. Jelaidan, who has no continuing role he says in the  
22 organization, have tried to do some things to try and help.  
23 But the organization itself, either through the Pakistani  
24 government or through Muslim World League, has taken no steps  
25 to determine where the documents are, much less produce them.

D3JP911C

1                   MR. McMAHON: I don't know what else it can do. If  
2 the Pakistani government takes the position it does, what do  
3 you do, your Honor?

4                   THE COURT: It may be that there's nothing to do, but  
5 I think the inexorable result of that conclusion that flows  
6 from that is that a default is appropriate. You know, I'm  
7 willing to be convinced otherwise, but I haven't heard anything  
8 yet that tells me, as to the trust, that that's not the result  
9 that should obtain.

10                  MR. McMAHON: You don't think that the 9-11 lawyers  
11 should make an attempt to contact the Pakistani government and  
12 see what they can get through their subpoena power that I can't  
13 get?

14                  THE COURT: Sure. I think they should do that if  
15 they're interested in getting the universe of documents, but  
16 that begs the question of whether a defendant, who nominally is  
17 in this case, is participating in the case and going to produce  
18 documents. There's nobody here who --

19                  MR. McMAHON: We've produced everything we have, your  
20 Honor.

21                  THE COURT: No, you've produced everything  
22 Mr. Jelaidan has. You haven't produced everything that the  
23 trust potentially could get because you've just told me, in  
24 several different ways, that the trust or the people who  
25 potentially might speak for the trust, haven't done anything as

D3JP911C

1 opposed to you or Mr. Jelaidan around the edges trying to do  
2 some things.

3 MR. McMAHON: Well, your Honor, the trust has been  
4 dormant since 1994; that's 13 years ago.

5 THE COURT: So why are you fighting me on the notion  
6 of a default being entered against the trust? Correct me if  
7 I'm wrong, I presume the trust hasn't been paying you legal  
8 fees --

9 MR. McMAHON: That's correct, your Honor.

10 THE COURT: -- for a number of years.

11 MR. McMAHON: That's correct, your Honor.

12 THE COURT: So I'm not quite sure why we're having  
13 this -- I was going to say argument; I'm not sure it rises to  
14 the level of an argument, but why we're having a dispute here  
15 when --

16 MR. McMAHON: Well, to the extent the trust cannot  
17 access any more documents that it already has, or Wa'el  
18 Jelaidan can't produce any more documents than he already has,  
19 or Wa'el Jelaidan's attorney can't produce any more documents  
20 than he already has, what are they supposed to do?

21 THE COURT: Well, you said that we're in  
22 jurisdictional discovery as to the trust; so if I wanted to  
23 hold a hearing, say, tomorrow on the issue of whether there's  
24 jurisdiction to proceed against the trust, what are you in a  
25 position to put on at that hearing?

D3JP911C

1                   MR. McMAHON: That we've complied in a reasonable  
2 fashion with everything that the plaintiffs have served us with  
3 in terms of jurisdictional discovery.

4                   THE COURT: But that speaks to discovery. As to the  
5 issue of jurisdiction, it sounds like you'd have no witnesses,  
6 and except for 22 pieces of paper, you'd have no documents,  
7 correct?

8                   MR. McMAHON: Well, there's a complete history of what  
9 this organization is all about, your Honor. It was set up by  
10 the Pakistani government in 1992. '94 they stopped funding it  
11 because of politics. They bring back Pakistanis from  
12 Bangladesh. What in God's name does that have to do with  
13 attacking or purposeful activity towards America? I'm just  
14 astounded by the fact that it's still in this case.

15                  THE COURT: Well, I've indicated what I'm likely to do  
16 with respect to the trust. Let's talk about Mr. Jelaidan  
17 himself. One thing that appears, although I haven't seen what  
18 you've offered to produce in-camera, but just taking what is  
19 part of the record on this motion, it looks like Mr. Jelaidan  
20 did nothing between November 16th of 2011 and February 21st of  
21 2013, more than two years.

22                  MR. McMAHON: That may be a result, your Honor, of  
23 some --

24                  THE COURT: Start again.

25                  MR. McMAHON: I'm sorry. It may be the result of some